

REMARKS

Claims 1-2, 5-9 and 11 were examined in the Final Office Action mailed May 7, 2007. The following rejections are pending:

- Rejection of claims 1-6 and 9-11 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent Publication No. US 2002/0152015 ("Seto") in view of U.S. Patent No. 5,839,534 to Chakraborty, *et al.* ("Chakraborty").
- Rejection of claims 7-8 under § 103(a) as unpatentable over Seto and Chakraborty, further in view of U.S. Patent No. 5,864,285 to Wieder, *et al.* ("Wieder").

In view of the remarks in the May 7, 2007 Final Office Action, and further in view of the remarks of the Board of Patent Appeals at pages 7-8 of the August 30, 2006 Decision On Appeal (noting that Seto performs brake blending according to a fixed scheme, as compared to the present invention's varying brake blending dependent upon the urgency signal, but that this distinction is not reflected in the claims on appeal), the Applicant has amended independent claims 1 and 9 to reflect this non-fixed braking scheme. Conforming amendments cancelling claims 5-6, 8 and 11 and changing the dependency of claim 7 to claim 1 have also been made.

As a separate matter, the Applicants again note in response to the rejection of claims 3-4 and 10 that these claims were canceled in the Amendment filed October 30, 2006.

Claim 1 now recites that the electronically controlled brake system "distributes the desired amount of braking force to the friction brake system and the retarding brake in a variable manner based upon the urgency signal, such that at high urgency values the braking force is distributed so that the friction

brake system is immediately applied in order to achieve a fastest possible application of the friction brake system and the retarding brake is applied to supplement a braking force supplied by the friction brake system, and at low urgency values the retarding brake is maximally utilized in order to reduce wear and tear on the friction brake system and the friction brake system is applied to supplement a braking force supplied by the retarding brake only to the extent the braking force supplied by the retarding brake is insufficient to meet the desired braking force."

As correctly noted by the Board, Seto does not teach or suggest such an approach to brake force distribution. Rather, as illustrated in the flow chart in Seto Fig. 2, Seto only teaches a shift from one mode to another if a vehicle is detected in front, *i.e.*, a binary trigger between engine-torque control mode and brake-control-plus-engine-torque-control mode in steps S003-S006. Seto's fixed scheme therefore fails to disclose or suggest claim 1's and claim 9's variable distribution approach (and this deficiency is not cured by Chakraborty or Wieder). Accordingly, claims 1 and 9 and dependent claims 2 and 7-8 are patentable over these references under § 103(a). Reconsideration and withdrawal of the pending rejections based on the Seto reference is respectfully requested.

CONCLUSION

In view of the foregoing, the Applicant submits that claims 1-2, 7 and 9 are in condition for allowance. Early and favorable consideration, and issuance of Notice of Allowance for these claims is respectfully requested.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #037068.52641US).

October 4, 2007

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "J.D. Sanok", written over a horizontal line.

Jeffrey D. Sanok
Registration No. 32,169
Mark H. Neblett
Registration No. 42,028

CROWELL & MORING LLP
Intellectual Property Group
P.O. Box 14300
Washington, DC 20044-4300
Telephone No.: (202) 624-2500
Facsimile No.: (202) 628-8844